

Committee on Equal Opportunities
Council on Postsecondary Education
February 16, 2009

Statewide Diversity Plan Development

At its January 16 meeting, the Council approved the Action Plan to develop a statewide diversity plan submitted by the CEO (attached). Based on the action plan adopted by CPE, the next step in the process is to conduct discussions and develop a mission statement, vision, core values and beliefs, and definition of diversity for presentation to CPE at the May 22 meeting.

To facilitate the discussion process the draft statements below are offered as the basis to begin the conversation. The institutional equal opportunity representatives and representative of the Kentucky Association of Blacks in Higher Education have been invited to participate in the discussions. In preparation for the discussions, the draft statements and a list of basic discussion questions have been shared with both groups.

Statewide Diversity Plan

Introduction, Background and History:

In 1982, the Council on Higher Education developed *The Commonwealth of Kentucky Higher Education Desegregation Plan* in response to a U.S. Office of Education Office for Civil Rights (OCR) finding that “the Commonwealth of Kentucky, in violation of Title VI of the Civil Rights Act of 1964, had failed to eliminate the vestiges of its former de jure racially dual system of public higher education.” Development of a plan was necessary for Kentucky to meet the requirements of Title VI of the Civil Rights Act of 1964. The duration of the original plan was five years (1982-87).

OCR cited Kentucky in three areas: students, employment, and enhancement of Kentucky State University, the state’s historically black university. Successive plans were developed in the context of a changing legal environment in which activities used to promote affirmative action and equal opportunity, particularly minority preferences in admissions, financial aid, and employment, came under increasing court scrutiny. The fundamental principles and purpose of equal opportunity and affirmative action are not challenged as much as specific practices used to accomplish the ends of equal opportunity and affirmative action.

In May 1999, the Council (Commonwealth) entered into a partnership with OCR to bring Kentucky into full compliance with Title VI of the Civil Rights Act of 1964 and the standards established in the U.S. Supreme Court decision in *U.S. v. Fordice*. The *Partnership Agreement* was a covenant between the Commonwealth of Kentucky and the OCR as a continuation of the ongoing efforts to provide minority students with opportunities to participate in the public higher education system. To that end, the *Kentucky Plan for Equal Opportunities in Postsecondary Education* and the *Partnership Agreement* included specific commitments,

objectives, and action plans to enhance educational opportunities for Kentucky resident African Americans. The *Partnership Agreement* has ended and the OCR has indicated that Kentucky will be notified of its status in the immediate future. Upon release, the Commonwealth will pursue access and equity through diversity planning.

Under the remedial planning rubric offered by the OCR, Kentucky made many gains that we believe should not be lost as the state transitions to a different planning schemata, particularly the gains made for resident African Americans and the enhancement of the Kentucky State University, the state's historically black university. Thus, any new plan must seek ways to preserve those gains while creating opportunity for others. There is an ongoing debate regarding ways to enhance access for ethnic minorities and underserved students, and promote the educational, economic, civic, social, and security benefits associated with having a diverse student body. While Kentucky is not one of the states that prohibit race-conscious action by public higher education institutions, the continuing war of words significantly impact policy development. Institutions that use race or ethnicity-conscious policies when focusing on educational opportunities (admissions, scholarships, and employment) must also give serious consideration to workable race neutral alternatives that may achieve the diversity sought. Governmental plans that require the use of minority preferences as key elements in meeting goals are subject to review under a standard of strict scrutiny, i.e., such plans must satisfy a compelling government interest, and that the means used to accomplish the goals set out in the plan must be narrowly tailored to satisfy those ends.

The economic imperative of effectively managing Kentucky's diverse resources directly impacts its ability to successfully compete in the global marketplace. Conversely, the social necessity of effectively managing diversity is critical if Kentucky is to become an attractive place for business, to live, to raise children, and to build successful business and careers.

Mission (Committee on Equal Opportunities):

The Council's Committee on Equal Opportunities was created in 1988 to oversee the implementation of equal opportunity plans, the partnership agreement with the U. S. Department of Education's Office for Civil Rights, and to annually evaluate effectiveness. The mission: 1) monitor and ensure the continuation of the Commonwealth's equal opportunity efforts (desegregation); 2) develop, in conjunction with state-supported institutions, a statewide equal opportunities plan; 3) advise the CPE on eligibility of institutions for new academic programs pursuant to the provisions of KRS 164.020(19) and 13 KAR 2:060; 4) conduct public college and university site visits to determine conditions on campuses of those institutions relative to equal opportunity issues; and, 5) make recommendations to the CPE for programs and activities promoting equal opportunity. The mission in a diversity planning environment would not change, except to incorporate a broader constituency of students, faculty, and staff.

Vision Statement:

The Commonwealth, by investing in its workforce and achieving the national rate of working age adults with a bachelor's degree or higher, through highly visible leadership, the principles of equal opportunity and affirmative action, are committed to transforming postsecondary

education and its citizenry into a community that embrace, value, respect, reflect, and promote academic excellence through cultural diversity and are free of intolerance and coercive behaviors.

Core Beliefs and Values:

The Commonwealth understands the value that a diverse student body, faculty, staff, and administration bring to its educational environment, the university community and beyond. We acknowledge that categories of difference are not always fixed but also can be fluid, we respect individual rights to self-identification, and we recognize that no one culture is intrinsically superior to another.

- Promotion of diversity in Kentucky is a vital component in the state's educational efforts and an important aspect of the Commonwealth's economic development efforts.
- Human diversity is variety in group presence and interactions.
- Respect for personal uniqueness and differences (mutual respect and human dignity).
- Intellectual and creative freedom and the free expression of ideas.
- Challenge stereotypes and promote sensitivity and inclusion (personal, institutional responsibility, and accountability).
- Placing learners and their learning at the center of all that we do.
- Prepare students to live and work in a diverse global society.
- Access to education, high expectations for all students and ensure support for their success.
- Public engagement that advances the commonwealth. (Community engagement, civic responsibility, and service to underserved and diverse population groups).
- Assessment and accountability measures that document the progress and outcomes of diversity efforts are integral in advancing diversity.
- A campus climate that supports collegiality, collaboration and civility (inclusive and welcoming environment).

Diversity Defined:

As noted by Governor Jennifer M. Granholm, State of Michigan, "just as we seek diversity in our economy, we must embrace human diversity in our communities, schools and workplaces. There is no question, diversity matters. It defines the global marketplace. When we bring together people of different backgrounds and different ways of seeing the world, we spark innovation...and innovation creates huge dividends. If we fully embrace the mosaic that is Michigan, our diversity will help fuel our economic transformation. "[State of the state address, February 6, 2007].

General Definition: Diversity is an inclusive community of people with varied human characteristics, ideas, and world views related, but not limited to race, sex, gender, religion, color, creed, national origin, age, physical challenges, socio-economic status, geographical region, or ancestry, that helps create an environment that honors and respects those differences in a safe, supportive and nurturing environment. it encourages access and opportunity by welcoming backgrounds, experiences, opinions, perspectives, and qualities different from our own. The Commonwealth accepts the challenges that diversity offers and

the opportunity to move beyond simple tolerance to embracing and celebrating the rich dimensions contained within each individual.

"Discrimination" and "Preferential Treatment" Defined:

This section may not be needed for purposes of diversity planning. The U.S. Supreme Court, in *Bakke* and *Grutter* ruled that diversity in higher education constitutes a "compelling state interest" and allows for use of race as a factor in the admissions process. A compelling state interest is not the equivalent to a fundamental constitutional right. As a general rule, affirmative action programs are permissive, not mandatory.

The Michigan courts ruled that discrimination refers to baseless and irrational line drawing. There are occasions when regulatory lines are legitimately drawn on the basis of some of the protected categories... When there is a sufficiently important government interest and the classification is adequately related to that interest. Supreme Court Justice O'Connor in *Grutter*, ruled that diversity in higher education was not just an important government interest, but that it was a compelling state interest.

Consideration of race, sex, color, ethnicity, or national origin as one of many factors in public education programs, does not constitute an illegal preference or grant "preferential treatment." Thus, a radically restrictive view is not appropriate. An important rule of thumb may be that whenever possible an interpretation that does not create constitutional invalidity is preferred to one that does.

Major Elements of Statewide Diversity Plan

1. Introduction, Background, and History
2. Mission (Committee on Equal Opportunities)
3. Vision Statement
4. Core Beliefs and Values
5. Diversity Defined
6. "Discrimination" and "Preferential Treatment" Defined
7. Plan Oversight
8. Plan Objectives
9. Follow Up and Revisions

The CEO promised to establish two work groups, appointed by Chair Maclin, to facilitate the diversity plan development process. Also, the development process is expected to conclude with the presentation of a diversity plan to the CPE in January 2010. At the conclusion of the discussion, the committee should identify from the constituent list the persons or groups it wishes to hear from next and set a date/time/location of the meeting.